

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

TRAVIS BLANK, #16486-078

VS.

UNITED STATES OF AMERICA

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CIVIL ACTION NO. 4:16cv628
CRIMINAL ACTION NO. 4:11cr67(1)

ORDER OF DISMISSAL

This case was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation concluding that the motion to vacate, set aside, or correct sentence should be dismissed without prejudice for failure to prosecute. Movant filed objections.

In his motion, Movant is asking for the modification of his sentence from October 28, 2011; thus, his motion is properly construed as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255¹. On August 30, 2016, Movant was ordered to file a standardized § 2255 form. When he failed to do so, the Magistrate Judge issued the Report and Recommendation, recommending dismissal for failure to prosecute. In his objections, Movant complains that his motion should not be filed as a § 2255 motion. He states that he has already filed a § 2255 motion; thus, this would be a successive motion. While the Court is aware of Movant's prior § 2255 motion, he was ordered to complete the standardized form to ensure the case could be assessed correctly and completely. Movant failed to comply, however. Even after the Report and Recommendation was issued, Movant still did not complete the standard form. In sum, Movant failed to comply with the

¹A pleading will be judged by the quality of its substance rather than according to its form or label and, if possible, it will be construed to give effect to its averments. *United States v. Robinson*, 78 F.3d 172 (5th Cir. 1996).

Court's order; he has failed to prosecute his case².

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of the case, has been presented for consideration. The Court has conducted a *de novo* review of the objections raised by Movant to the Report and concludes that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the Court.

It is accordingly **ORDERED** that the motion to vacate, set aside, or correct sentence is **DISMISSED** without prejudice. Movant's objections are **OVERRULED**.

Finally, it is **ORDERED** that all motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this 9th day of November, 2016.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

²The Court notes that this case could also be dismissed as successive as well as barred by the AEDPA statute of limitations.